

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

FEDERAL TRADE COMMISSION,

Plaintiff,

- VS -

No. 1025798 ONTARIO, INC., et al.,

Defendants

**ANSWER TO  
“CROSS-CLAIM  
AND  
COUNTERCLAIM”  
BROUGHT BY THE  
FULFILLMENT  
SOLUTIONS  
ADVANTAGE, INC.,  
et al.**

Civil Action No.:  
03-CV-0910 A(Sc)

- VS -

DAVID VARLEY,  
LAURENCE ANTHONY WHITE,  
GARY RICHARD BUSH,  
KINGSTOWN ASSOCIATES LIMITED and BVW  
ASSOCIATES, INC. d/b/a Beauty Visions Worldwide  
and Slimshop; HEARST COMMUNICATIONS, INC.  
d/b/a Cosmopolitan Magazine,  
THE PLAIN DEALER PUBLISHING COMPANY  
d/b/a The [Cleveland] Plain Dealer,  
KNIGHT-RIDDER INC., d/b/a Contra Costa Times  
and d/b/a The Myrtle Beach Sun News,  
THE NEWS CORPORATION LIMITED  
d/b/a Smart Source,  
COX ENTERPRISES INC. d/b/a  
The Atlanta Constitution-Journal,  
CLIPPER MAGAZINE INC. d/b/a Clipper Magazine,  
and DORI KLEIN & ASSOCIATES, INC., a/k/a  
DK & Associates, Inc.,

Cross-claim and Counterclaim Defendants.

Hearst Communications, Inc., Plain Dealer Publishing Co., Knight-Ridder Inc., News  
America Marketing FSI, Inc. improperly sued as The News Corporation Limited, Cox  
Enterprises, Inc., and Clipper Magazine, an unincorporated division of Gannett Satellite

Information Network, Inc., improperly sued as Clipper Magazine, Inc. (“Clipper Magazine”), all improperly designated as “Cross-Claim and Counterclaim Defendants”, answer, by their attorneys Nixon Peabody LLP, the Cross-claim and Counterclaim filed by the defendants The Fulfillment Solutions Advantage, Inc., INT Access, Inc. d/b/a International Access, Robert van Velzen and Nancy Sprague.

The above named “Cross-claim and Counterclaim defendants” answer the allegations set forth in paragraphs 21-49 of the Defendants’ Answer designated as a “Cross-claim and Ninth Defense” as follows:

1. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 21(a) and 21(b).
2. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22.
3. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 23.
4. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 24.
5. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 25 except deny the allegations contained in the second through fourth sentences thereof.
6. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 26.
7. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 27.

8. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 28.

9. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 29.

10. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 30.

11. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 31.

12. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 32.

13. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 33.

14. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 34.

15. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 35 that relate to the claims made by the FTC or the Declaration of Katherine Zownir, admit that Hearst Communications, Inc. is a corporation incorporated under the laws of the State of Delaware, does business in New York, has its principal place of business at the address alleged, and that Cosmopolitan is a trade name under which it does business, but deny that Hearst Communications, Inc. is a proper party to this action pursuant to Rule 13(h) of the Federal Rules of Civil Procedure.

16. Deny the allegations contained in paragraph 36.

17. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 37 that relate to the claims made by the FTC or the Declaration of Katherine Zownir, admit that Plain Dealer Publishing Co. is a corporation incorporated under the laws of the State of Ohio with its principal place of business at the address alleged, and that The Plain Dealer is a trade name under which Plain Dealer Publishing Co. does business, and further deny that Plain Dealer Publishing Co. is a proper party to this action pursuant to Rule 13(h) of the Federal Rules of Civil Procedure.

18. Deny the allegations contained in paragraph 38.

19. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 39 that relate to the claims made by the FTC or the Declaration of Katherine Zownir, deny that The Contra Costa [CA] Times and the Myrtle Beach Sun News are trade names under which Knight-Ridder, Inc. does business, admit that Knight-Ridder, Inc. is a corporation incorporated under the laws of the State of Florida with its principal place of business at the address alleged, but deny that the advertising offices alleged for Contra Costa [CA] Times and Myrtle Beach Sun News are addresses belonging to Knight-Ridder Inc. and further deny that Knight-Ridder Inc. is a proper party to this action pursuant to Rule 13(h) of the Federal Rules of Civil Procedure.

20. Deny the allegations contained in paragraph 40.

21. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 41 that relate to the claims made by the FTC or the Declaration of Katherine Zownir, deny that Smart Source is a trade name under which News America Marketing FSI, Inc., improperly sued as The News Corporation Limited, does business, admit that The News Corporation Limited is a corporation incorporated under the laws of South

Australia with its principal place of business at the address alleged, but deny that The News Corporation Limited has an advertising office at 1211 Avenue of the Americas, New York, New York 10036 and further deny that News America Marketing FSI, Inc., improperly sued as The News Corporation Limited, is a proper party to this action pursuant to Rule 13(h) of the Federal Rules of Civil Procedure.

22. Deny the allegations contained in paragraph 42.

23. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 43 that relate to the claims made by the FTC or the Declaration of Katherine Zownir, deny that The Atlanta Journal-Constitution is a trade name under which Cox Enterprises, Inc. does business, admit that Cox Enterprises, Inc. is a corporation incorporated under the laws of the State of Delaware but deny that its principal place of business is at the address alleged, and further deny that Cox Enterprises, Inc. is a proper party to this action pursuant to Rule 13(h) of the Federal Rules of Civil Procedure.

24. Deny the allegations contained in paragraph 44.

25. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 45 that relate to the claims made by the FTC or the Declaration of Katherine Zownir, deny that Clipper Magazine is a trade name under which Clipper Magazine, Inc. does business, deny that Clipper Magazine, Inc. is a corporation incorporated under the laws of the Commonwealth of Pennsylvania, but admit that Clipper Magazine has an advertising office at 3708 Hempland Road, Mountville, Pennsylvania 17554 and further deny that Clipper Magazine is a proper party to this action pursuant to Rule 13(h) of the Federal Rules of Civil Procedure.

26. Deny the allegations contained in paragraph 46.

27. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 47.

28. Deny the allegations contained in paragraph 48 to the extent they relate to these answering parties and otherwise deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained therein.

29. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 49.

The above named “Cross-claim and Counterclaim defendants” answer the allegations set forth in paragraphs 50-53 of the Defendants’ Answer designated as a “Counterclaim” as follows:

30. Deny the allegations of paragraph 50 to the extent they relate to these answering parties and otherwise deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.

31. Deny the allegations contained in paragraphs 51 and 51(a)-(d) to the extent they relate to these answering parties and otherwise deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein.

32. In response to paragraph 52, repeat and restate each and every response previously made herein to the allegations contained in paragraphs 21 through 49 of the Answer with Cross-claim and Counterclaim as though fully set forth herein, and deny that the additional Cross claim/counterclaim Defendants are proper parties pursuant to Rule 13(h) of the Federal Rules of Civil Procedure.

33. Deny that this Court has jurisdiction over these “Cross-claim/counterclaim Defendants” or that the issues alleged in paragraph 53 are properly before the Court.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

34. The purported “Cross-claim” and “Counterclaim” must be dismissed as procedurally defective and failing to satisfy the requirements of Rules 13, 14, 19 and 20 of the Federal Rules of Civil Procedure.

**SECOND AFFIRMATIVE DEFENSE**

35. The claims against the “Cross-claim and Counterclaim Defendants” must be dismissed and these answering parties must be dismissed from this action because they are improperly joined parties pursuant to Rule 21 of the Federal Rules of Civil Procedure.

**THIRD AFFIRMATIVE DEFENSE**

36. This Court lacks personal jurisdiction over these answering Defendants and subject matter jurisdiction over the claims asserted in the “Cross-claim” and “Counterclaim”.

**FOURTH AFFIRMATIVE DEFENSE**

37. The claims designated as “Cross-claim” and “Counterclaim” fail to state claims upon which relief may be granted against these answering parties.

**FIFTH AFFIRMATIVE DEFENSE**

38. The injuries, damages and/or statutory violations alleged in the underlying Complaint and in the Answer with Cross-claim and Counterclaim were caused, in whole or in part, by entities over whom these answering parties had no control or authority.

**SIXTH AFFIRMATIVE DEFENSE**

39. Any relief granted pursuant to the claims asserted in the Answer with Cross-claim and Counterclaim would violate the First Amendment to the United States Constitution.

**WHEREFORE**, Hearst Communications, Inc., Plain Dealer Publishing Co., Knight-Ridder Inc., News America Marketing FSI, Inc., improperly sued as The News Corporation Limited, Cox Enterprises, Inc., and Clipper Magazine, an unincorporated division of Gannett Satellite Information Network, Inc., improperly sued as Clipper Magazine, Inc. ("Clipper Magazine") respectfully demand judgment:

1. Dismissing the Claims against them in the Answer with Cross-claim and Counterclaim, together with attorneys' fees, costs and disbursements thereof;

2. For such other, further and different relief as may be just and proper together with the costs and disbursements of this action.

Dated: Buffalo, New York  
February 7, 2004

NIXON PEABODY LLP

By: /s/ Susan C. Roney

Susan C. Roney, Esq.

Robert Bernius, Esq.

Attorneys for Cross-claim & Counterclaim  
Defendants Hearst Communications, Inc., Plain  
Dealer Publishing Co., Knight-Ridder Inc., News  
America Marketing FSI, Inc. improperly sued as  
The News Corporation Limited, Cox Enterprises,  
Inc., and Clipper Magazine, an unincorporated  
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**CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that on February 9, 2004, I caused a copy of the foregoing **ANSWER TO CROSS-CLAIM AND COUNTERCLAIM BROUGHT BY THE FULFILLMENT SOLUTIONS ADVANTAGE, INC., et al.** to be served upon the following by mailing same in a properly stamped envelope, addressed as set forth below:

TO: FORD MARRIN ESPOSITO WITMEYER  
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NIXON PEABODY LLP

By: /s/ Susan C. Roney  
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Robert Bernius, Esq.  
Attorneys for Cross-claim and Counterclaim  
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Publishing Co., Knight-Ridder Inc., News America  
Marketing FSI, Inc. improperly sued as The News  
Corporation Limited, Cox Enterprises, Inc., and Clipper  
Magazine, an unincorporated division of Gannett  
Satellite Information Network, Inc., improperly sued as  
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